



**UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/300,510	09/02/94	GEETER	M 092 DUS

LAHIVE & COCKFIELD, LLP
28 STATE STREET
BOSTON MA 02109

HM11/0617

EXAMINER	
CUNNINGHAM, T	
ART UNIT	PAPER NUMBER
1644	

DATE MAILED:

06/17/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Defective Notice of Appeal or Brief

Application No.
08/300,510

Applicant(s)
G fter et al.

Examiner
Thomas Cunningham

Group Art Unit
1644

☐ The Notice of Appeal filed on _____ is:

☐ not acceptable because:

- ☐ it was not timely filed.
- ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- ☐ the appeal fee received on _____ was not timely filed.
- ☐ the submitted fee of \$ _____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$ _____.
- ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- ☐ a Notice of Allowability, form PTO-37, was mailed by the Office on _____.

☒ The appeal brief filed on Apr 8, 1998 is NOT acceptable for the reason(s) indicated below:

☒ ~~The brief and/or brief fee is untimely. See 37 CFR 1.192.~~ *see attachment.*

☐ The statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).

☐ The submitted brief fee of \$ _____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$ _____.

The appeal in this application will be dismissed unless corrective action is taken. Extensions of time may be obtained under 37 CFR 1.136(a).

☐ The appeal in this application is DISMISSED because:

- ☐ The fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- ☐ The brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.

☐ Because of the dismissal of the appeal, this application:

- ☐ is abandoned because there are no allowed claims.
- ☐ is being returned to the examiner for final disposition because it contains allowed claims. Prosecution on the merits is CLOSED.

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NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37

CFR 1.192©

A. The brief does not contain a statement of the status of an amendment filed subsequent to the final rejection as required by 37 CFR 1.192(c)(4). Appellant has not indicated that the third amendment after final rejection which amends claims 106 and 133 has not been entered.

B. The brief does not contain a statement of the status of all the claims, pending or canceled, and identify the claims appealed as required by 37 CFR 1.192(c)(3). The Appendix to the Appeal Brief incorrectly indicates the status of claims 106 and 133 which have not been amended as shown in the Appendix.

C. Page 10 of the Brief filed 4/10/98 (Paper No. 31) includes a statement that "the rejected claims" do not stand or fall together, but fails to present reasons in support thereof as required under 37 CFR 1.192(c)(5). MPEP § 1206. Specifically, it fails to indicate whether (I) the claims subject to each rejection stand or fall together for the purpose of that rejection or (II) whether each of the claims stands or falls independently for the purposes of each rejection. It is presumed by the Examiner that it is Appellant's intent to have the claims subject to each rejection stand or fall together for the purposes of that rejection. However, unless this is clearly indicated in the Appeal Brief it is likely that the application will be remanded to the Examiner to clarify which claims stand or fall together.

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D. If Appellant believes that each claim subject to a particular rejection does not stand or fall together with the other claims subject to that same rejection, then each claim (or set of claims) deemed to not stand or fall together should be presented as a separate issue and have a separate heading.

Applicant is given a TIME LIMIT OF ONE MONTH from the date of this letter or any time remaining in the period under 37 CFR 1.192(a) for filing a new complete brief. If a new brief that fully complies with 37 CFR 1.192© is not timely submitted, the appeal will be dismissed as of the date of expiration of the period provided by 37 CFR 1.192(a). NO EXTENSION OF THIS ONE MONTH TIME LIMIT MAY BE OBTAINED UNDER EITHER 37 CFR 1.136(a) or (b) but the original TWO-MONTH period under 37 CFR 1.192(a) for filing the brief may be extended under 37 CFR 1.136(a) up to SIX MONTHS from the date of the notice of appeal.



THOMAS M. CUNNINGHAM
PRIMARY EXAMINER
GROUP 1800